

**AGREEMENT FOR SERVICES #6782**  
Certification Review Hearing Officer

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**THIS AGREEMENT** is made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and California Hearing Officers, LLP, a duly qualified to conduct business in the State of California, whose principal place of business is 8801 Folsom Boulevard, Suite 220, Sacramento, CA 95826, (hereinafter referred to as "Contractor");

**RECITALS**

**WHEREAS**, California Welfare and Institutions Code (WIC) Section 5000 et seq. (Lanterman-Petris-Short Act) was signed into law in 1967, went into full effect on July 1, 1972, and concerns the involuntary civil commitment of persons to a mental health institution; and

**WHEREAS**, County provides for the operation of a sixteen-bed, twenty-four hours a day, Psychiatric Health Facility (PHF) to meet the needs of persons eighteen (18) years and older exhibiting acute psychiatric symptoms; and

**WHEREAS**, WIC Section 5150 provides for detention for up to seventy-two (72) hours observation for persons who, as a result of a mental disorder, may be a danger to themselves, to others or who may be gravely disabled; and

**WHEREAS**, WIC Section 5250 et seq. provides a process whereby a person detained for seventy-two (72) hours and has received an evaluation may be certified for not more than fourteen (14) days of intensive treatment related to the mental health disorder or impairment by chronic alcoholism under certain conditions; and

**WHEREAS**, WIC Section 5270.15 et seq. provides that upon the completion of a fourteen (14)-day period of intensive treatment pursuant to Section 5250, the person may be certified for an additional period of not more than thirty (30) calendar days of intensive treatment under specific conditions; and

**WHEREAS**, when a person is certified for intensive treatment pursuant to WIC Sections 5250 or Section 5270.15, WIC Section 5256 requires a certification review hearing to be held within four days of the date on which the person is certified for intensive treatment; and

**WHEREAS**, WIC Section 5256.1 requires that said certification review hearing be conducted by either a court-appointed commissioner, a referee, or a Certification Review Hearing Officer (CRHO) and sets forth specific qualifications of said CRHO; and

**WHEREAS**, County desires to obtain the services of a Contractor to act in the capacity of a CRHO in order to provide certification review hearing services on behalf of the County Health and Human Services Agency (HHS) pursuant to WIC Section 5256; and

**WHEREAS**, Contractor has represented to County that it meets the requirements of WIC Section 5256.1 to perform the certification review hearing services required hereunder and County has determined to rely upon such representations; and

**WHEREAS**, as required under WIC Section 5256.1, the El Dorado County Mental Health Director, County Counsel, and the County Public Defender have unanimously approved Contractor to provide CRHO staff and services; and

**WHEREAS**, Contractor has represented to County that it is specially trained, experienced, expert, and competent to perform the special services described in **Article I, "Scope of Services;"** that it is an independent and bona fide business operation, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and County relies upon those representations; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

**WHEREAS**, County has determined that the provision of such services provided by Contractor are in the public's best interest and that there are specialty skills, qualifications, and equipment not expressly identified in County classifications involved in the performance of the work in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(b), El Dorado County Charter, Section 210(b)(6), and/or Government Code Section 31000;

**NOW, THEREFORE**, County and Contractor mutually agree as follows:

## **ARTICLE I**

**A. Scope of Services:** Contractor or designated CRHO as applicable, agrees to:

1. Furnish staff to serve as a CRHO and to provide services required to complete Certification Review Hearings in compliance with all applicable laws, including WIC Section 5256 et seq., on an "as requested basis," for those incidents where an individual has been served with a Notice of Certification pursuant to WIC Section 5250 et seq. and/or WIC Section

5270.10 et seq.

2. Ensure that any person engaged by Contractor to furnish services as a CRHO shall be qualified in accordance with WIC Section 5256.1 and shall adhere to all of the terms and conditions of this Agreement. The list of individuals authorized as a CRHO is attached hereto as **Exhibit A** and incorporated by reference herein.
  - a. Exhibit A may be updated or amended during the term of this Agreement without requiring an amendment if the following conditions are met:
    - i. New CRHO(s) can be utilized for CRHO services only after an updated Exhibit A is confirmed in writing by HHSA.
    - ii. Contractor shall submit, in writing, a new Exhibit A and qualifications of proposed new CRHO(s), and/or the names of the CRHO's who are no longer employed by Contractor, to Contract Administrator.
    - iii. Upon unanimous agreement of the updated Exhibit A by the El Dorado County Mental Health Director, County Counsel, and the County Public Defender, HHSA shall notify Contractor in writing within fifteen (15) days after the list is approved pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties."
3. Attend each Certification Review Hearing in person.
  - a. Certification Review Hearings shall be held by video conference or teleconference, at the El Dorado County PHF, 935-B Spring Street, Placerville, California 95667 ("Host Location"), or a Host Location otherwise specified by County in writing without requiring an amendment to this Agreement.
  - b. Certification Review Hearings are held each Monday and Thursday at 10:00 a.m. at the host location, or at another date and time mutually agreed to by the County and Contractor in writing without requiring an amendment to this Agreement.
  - c. The CRHO shall render a verbal Certification Review Hearing Decision to the hearing participants upon completion of each scheduled Certification Review Hearing.
  - d. The CRHO shall complete a "Certification Review Hearing Record and Decision" attached hereto as **Exhibit B** and incorporated by reference herein, or a substitute form agreed to in writing by County ("Decision Summary").
  - e. Contractor shall fully comply with WIC Section 5256 through Section 5256.7, including ensuring the notification of decision referred to in 5256.7 is submitted to the attorney for the person certified, the Director of the El Dorado County Psychiatric Health Facility, and El Dorado County Superior Court.

B. HHSA agrees to:

1. Ensure PHF Certification Review Hearings are scheduled in accordance with WIC Section 5256.
2. Coordinate the date and time of any Certification Review Hearing not held at the regularly scheduled time on a Monday or Thursday at 10:00 a.m. with Contractor to ensure availability.
3. Ensure the location of the hearings is in accordance with WIC Section 5256.1.
4. Maintain records of the Certification and Certification Review Hearing in the client's record, for a term of at least seven (7) years, from the close of the County's fiscal year in which the contract was in effect, or any longer period as may be required by Federal or State law including, but not limited to any record retention laws pertaining to minors, psychiatric health facilities, psychology clinics, psychologists and/or other licensed

professionals. If at the end of the applicable retention period there is litigation or an audit or other investigation involving those books or records, County will retain the books or records until the resolution of such litigation, audit, or investigation.

**ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by both parties hereto and shall cover the period October 1, 2022 through September 30, 2025, unless terminated earlier pursuant to the provisions contained herein below in the Article(s) titled “Fiscal Considerations” or “Default, Termination, and Cancellation.”

**ARTICLE III**

**Compensation for Services:**

A. **Rates:** For the purposes of this Agreement, the billing rate shall be in accordance with the table below:

Description	Rates
<b>10/01/22 through 12/31/22</b>	
Certification Review Hearing	270/hour
Travel	135/hour
<b>1/1/23 through 12/31/23</b>	
Certification Review Hearing	280/hour
Travel	140/hour
<b>1/1/24 through 12/31/24</b>	
Certification Review Hearing	290/hour
Travel	145/hour
<b>1/1/25 through 9/30/25</b>	
Certification Review Hearing	300/hour
Travel	150/hour

1. County shall pay Contractor a minimum of one (1) hour for each scheduled hearing day (typically, every Monday and Thursday); additional time will be billed in fifteen (15) minute increments.
2. Multiple Certification Review Hearings may be scheduled on the same date and at the same time. The total time for each hearing heard on the same date shall be applied to the hourly rate for performing Certification Review Hearings.
3. For the purposes of this Agreement, the hourly rate paid to Contractor for Certification Review Hearings shall include, but may not be limited to, compensation, benefits, insurance, training, continued education, professional fees and licensing, supervision, utilities, supplies, administrative overhead, communication, advertising, instruments/tools, IT support, general postage, general printing, general duplication, and all other costs related to the provision of services described herein and business

- operations, with the exception of travel time, as defined in Paragraph #4, herein below.
4. For the purposes of this Agreement, the hourly rate paid to Contractor for travel shall include travel from the CRHO staff's point of initiation to the Host Location, and return to the point of initiation, or other such location if such location requires less time than returning to the point of initiation, and shall be inclusive of all travel-related expenses. Travel time may not exceed a total of three (3) hours for each Certification Review Hearing date.
  5. In addition to the hourly rate paid to Contractor for travel, Contractor shall receive milage reimbursement at the current IRS rate. Milage reimbursement shall include travel from the CRHO staff's point of initiation to the Host Location, and return to the point of initiation, or other such location if such location requires less milage than returning to the point of initiation.

**Invoices:** It is a requirement of this Agreement that Contractor shall submit an original invoice, similar in content and format with the following sample available at: [https://www.edcgov.us/Government/hhsa/Pages/hhsa\\_contractor\\_resources.aspx](https://www.edcgov.us/Government/hhsa/Pages/hhsa_contractor_resources.aspx). Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces and on any enclosures or backup documentation. Copies of documentation attached to invoices shall reflect Contractor's charges for the specific services billed on those invoices.

Invoices shall be sent as follows, or as otherwise directed in writing by County:

<i><b>Email (preferred method):</b></i>	<i><b>U.S. Mail:</b></i>
<p><a href="mailto:BHinvoice@edcgov.us">BHinvoice@edcgov.us</a></p> <p>Please include in the subject line: "Contract #, Service Month, Description / Program</p>	<p>County of El Dorado Health and Human Services Agency Attn: Finance Unit 3057 Briw Road, Suite B Placerville, CA 95667-5321</p>

or to such other location as County directs.

For services provided herein, including any deliverables that may be identified herein, Contractor shall submit invoices for services fifteen (15) calendar days following the end of a "service month." For billing purposes, a "service month" shall be defined as a calendar month during which Contractor provides services in accordance with Article I, "Scope of Services." For all satisfactory services provided herein, County agrees to pay Contractor monthly in arrears and within forty-five (45) calendar days following the County's receipt and approval of itemized invoice(s) identifying services rendered. County may withhold or delay any payment if Contractor fails to comply with any provision of this Agreement.

1. Supplemental Invoices: For the purpose of this Agreement, supplemental invoices shall be defined as invoices submitted for additional services rendered during a month for which a prior invoice has already been submitted to County. Supplemental invoices should include the standard invoice format with description of services rendered and a detailed explanation why the invoice was not submitted in the approved timeframe.
  - 1.1. For those situations where a service is disallowed by HHSa on an invoice, or inadvertently not submitted on an invoice, and a corrected invoice is later submitted

("Supplemental Invoice"), Supplemental Invoices for services provided during the period July 1st through June 30th for each fiscal year of this Agreement and received by HHSA after July 31st of the subsequent fiscal year, shall be neither accepted nor paid by the County. Requests for exceptions to pay an invoice received after July 31st of the subsequent year, must be submitted in writing and must be approved by HHSA's Chief Fiscal Officer.

In the event that Contractor fails to deliver the services, documents or other deliverables required herein, County at its sole option may delay the monthly payment for the period of time of the delay, cease all payments until such time as the deliverables are received, or proceed as set forth herein below in the Article titled "Default, Termination, and Cancellation." In no event shall County be obligated to pay Contractor for any amount above the Maximum Obligation of this Agreement.

#### **ARTICLE IV**

**Maximum Obligation:** The maximum obligation for services and deliverables provided under this Agreement shall not exceed \$200,000.00 for all of the stated services during the term of the Agreement.

#### **ARTICLE V**

##### **Audits, Compliance, and Monitoring:**

- A. Contractor shall provide a copy of any Audit to County within thirty (30) calendar days of completion of said audit.
- B. Audits and compliance monitoring by any representative of the Federal government, State government, or County may include the review of any and all terms related to this Agreement. Audits or monitoring by the County may be performed by way of annual Contract Monitoring Surveys. Contractors receiving a Contract Monitoring Survey shall, within sixty (60) calendar days of receipt, complete and return the survey along with all documentation, details, and supporting materials required by the survey or otherwise necessary for the County to verify compliance with the terms and conditions of the Agreement. Failure to return the survey within the specified time period may result in the withholding of payment from the Contractor until such time as compliance with the terms of the Agreement can be verified. Verifying compliance may necessitate additional on-site reviews should information submitted by the Contractor be deemed insufficient or inaccurate.
- C. All files, records, documents, sites, and personnel are subject to review by representatives from County, State or Federal government.
- D. Upon notification of an exception or finding of non-compliance, the Contractor shall submit evidence of Corrective Action within thirty (30) calendar days, or as otherwise specified in the notice of required corrective action provided by the County. Continued non-compliance beyond due date for submission of Corrective Action may lead to termination of this Agreement in accordance with the Article titled "Default, Termination, and Cancellation."
- E. Failure by County to notify or require Corrective Action does not constitute acceptance of the practice of waiver of the County's right to enforce.

## ARTICLE VI

### **Nondiscrimination:**

- A. County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex; Contractor shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended, the California Family Rights Act (Government Code Section 12945.2), the Unruh Civil Rights Act (California Civil Code, Division I, Part 2, Section 51, et seq), the Ralph Civil Rights Act (California Civil Code, Division I, Part 2, Section 51.7), the California Trafficking Victims Protection Act (California Civil Code, Division I, Part 2, Section 52.5), the Disabled Persons Act (California Civil Code, Division I, Part 2.5), and as applicable, Section 11135 et. seq., of the California Government Code, prohibiting discrimination in all state-funded programs. Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Contractor's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 11102.
- D. Contractor shall comply with **Exhibit C**, "Vendor Assurance of Compliance with the County of El Dorado Health and Human Services Agency Nondiscrimination in State and Federally Assisted Programs," attached hereto, incorporated by reference herein, and thus made a part hereof. Contractor shall acknowledge compliance by signing and returning **Exhibit C** upon request by County.

## ARTICLE VII

**Taxes:** Contractor certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Contractor to County. Contractor agrees that it shall not default on any obligations to County during the term of this Agreement.

## ARTICLE VIII

**Executive Order N-6-22 – Russia Sanctions:** On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with,

individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, if this Agreement is funded by state funds and County determines Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The County shall provide Contractor advance written notice of such termination, allowing Contractor at least thirty (30) calendar days to provide a written response. Termination shall be at the sole discretion of the County.

#### **ARTICLE IX**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

#### **ARTICLE X**

**Contractor to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Contractor, and Contractor may perform similar work or services for others. However, Contractor shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Contractor's responsibilities or hinder Contractor's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

#### **ARTICLE XI**

**Assignment and Delegation:** Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

In the event Contractor receives written consent to subcontract services under this Agreement, Contractor is required to ensure subcontractor remains in compliance with the terms and conditions of this Agreement. In addition, Contractor is required to monitor subcontractor's compliance with said terms and conditions, and provide written evidence of monitoring to County upon request.

#### **ARTICLE XII**

**Independent Contractor:** The parties intend that an independent contractor relationship will be created by this contract. Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Contractor. Those persons will be entirely and exclusively under the direction, supervision, and control of Contractor.



County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Contractor performs the work or services for accomplishing the results.

Contractor, including any subcontractor or employees of Contractor, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Contractor shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Contractor. Contractor shall not be subject to the work schedules or vacation periods that apply to County employees.

Contractor shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Contractor provides for its employees.

Contractor acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

### **ARTICLE XIII**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

#### **ARTICLE XIV**

**Audit by California State Auditor:** Contractor acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Contractor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

#### **ARTICLE XV**

##### **Default, Termination, and Cancellation:**

A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:

1. The alleged default and the applicable Agreement provision.
2. That the party in default has ten (10) calendar days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) calendar days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Contractor shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Contractor, the excess costs to procure from an alternate source.
2. County shall pay Contractor the sum due to Contractor under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Contractor under this Agreement and the balance, if any, shall be paid to Contractor upon demand.
3. County may require Contractor to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
2. A representation or warranty made by Contractor in this Agreement proves to have been false or misleading in any respect.

3. Contractor fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
  4. A violation of the Article titled "Conflict of Interest."
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Contractor ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Contractor, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

## ARTICLE XVI

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF EL DORADO  
Health and Human Services Agency  
3057 Briw Road, Suite B  
Placerville, CA 95667  
ATTN: Contracts Unit

or to such other location as the County directs.

with a copy to

COUNTY OF EL DORADO  
Chief Administrative Office  
Procurement and Contracts Division  
330 Fair Lane  
Placerville, CA 95667  
ATTN: Purchasing Agent

Notices to Contractor shall be addressed as follows:

CALIFORNIA HEARING OFFICERS, LLP  
8801 Folsom Boulevard, Suite 220  
Sacramento, CA 95826  
ATTN: Kamardeep Athwal, General Partner

or to such other location as the Contractor directs.

#### **ARTICLE XVII**

**Change of Address:** In the event of a change in address for Contractor's principal place of business, Contractor's Agent for Service of Process, or Notices to Contractor, Contractor shall notify County in writing pursuant to the provisions contained herein above under the Article titled "Notice to Parties." Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

#### **ARTICLE XVIII**

**Indemnity:** To the fullest extent permitted by law, Contractor shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Contractor or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

#### **ARTICLE XIX**

**Insurance:** Contractor shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.

- D. In the event Contractor is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without prior written notice to County; and
  - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

## **ARTICLE XX**

**Force Majeure:** Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control; and
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, “cause that is beyond its control” includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

## **ARTICLE XXI**

**Waiver:** No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

## **ARTICLE XXII**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Contractor attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Contractor relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article titled “Default, Termination and Cancellation.”

## **ARTICLE XXIII**

**California Residency (Form 590):** If Contractor is a California resident, Contractors must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of

each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

#### **ARTICLE XXIV**

**County Payee Data Record Form:** All independent Contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

#### **ARTICLE XXV**

**County Business License:** County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Contractor warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

#### **ARTICLE XXVI**

**Licenses:** Contractor hereby represents and warrants that Contractor and any of its subcontractors employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Contractor and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Contractor and its subcontractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

#### **ARTICLE XXVII**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Nicole Ebrahimi-Nuyken, LMFT, Director of Behavioral Health, or successor.

#### **ARTICLE XXVIII**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

#### **ARTICLE XXIX**

**Electronic Signatures:** Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

## ARTICLE XXX

**Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

## ARTICLE XXXI

### Additional Terms and Conditions:

- A. Mental Health Plan and Performance Agreement Special Terms and Conditions: All services provided pursuant to this Agreement, shall be in accordance with the terms and conditions of Agreements between the County of El Dorado and the California Department of Health Care Services, currently 17-94580 #3190 (hereinafter referred to as the MHP Agreement) and 21-10079 #5819 (hereinafter referred to as the Performance Agreement), or as may be replaced or amended hereinafter. The MHP Agreement and Performance Agreement are incorporated by reference herein. Contractor agrees to be responsible to ensure all services are consistent and in accordance with said Agreement(s) in effect at the time services are provided, available at <http://www.edcgov.us/HHSAForContractors/>.
- B. Mandated Reporter Requirements: California law requires that certain persons are mandated to report suspected child abuse, suspected dependent adult abuse, and suspected domestic violence. Contractor acknowledges and agrees to comply with the following state-required mandated reporter regulations as they apply to the services being rendered by Contractor: California Penal Code Sections 11160-11163, which covers suspected domestic violence; California Penal Code, Article 2.5 (commencing with Section 11164) of Chapter 2 of Title I of Part 4, also known as the Child Abuse and Neglect Reporting Act; and WIC Section 15630, which covers suspected dependent adult abuse.
- Failure to comply with these reporting requirements may lead to a fine of up to \$1,000 and/or up to six months in jail. A person who makes a report in accordance with these mandates shall not incur civil or criminal liability as a result of any report required or authorized by the above regulations.
- C. Monitoring for Compliance: County shall monitor the Contractor's operations for compliance with the provisions of this Agreement as well as applicable Federal and State laws and regulations. When monitoring activities identify areas of non-compliance, County shall issue reports to the Contractor detailing findings, recommendations, and corrective action. Failure to comply with required corrective action could lead to civil penalties, as appropriate, pursuant to California Code Regulations., Title 9, Sections 1810.380 and 1810.385.
- D. Drug-Free Workplace: Contractor agrees to maintain a drug-free workplace and remain in compliance with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. Chapter 10) and the California Drug-Free Workplace Act of 2000 (Government Code Section 8350 et seq.) and any subsequent amendments to either Act thereto. A "drug free workplace" means the site(s) for the performance of work done by Contractor at which Contractor and employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of any controlled substance. A list of controlled substances can be found in



Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in Regulation 21 Code of Federal Regulations (CFR) 1308.11 – 1308.15.

- E. Confidentiality and Information Security Provisions: Contractor shall comply with applicable federal, state, and local laws and regulations, including but not limited to the Code of Federal Regulations Title 45, parts 160-164, regarding the confidentiality and security of Personally Identifiable Information (PII).

Personally Identifiable Information means any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including but not limited to, his or her name, signature, social security number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, or any other financial information.

1. Permitted Uses and Disclosures of PII by Contractor.
  - a. Permitted Uses and Disclosures. Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the confidentiality, integrity, and availability of the PII that it creates, receives, maintains, or transmits; and prevent the use or disclosure of PII other than as provided for in this Agreement. Except as otherwise provided in this Agreement, Contractor, may use or disclose PII to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate federal or state laws or regulations.
  - b. Specific Uses and Disclosures provisions. Except as otherwise indicated in the Agreement, Contractor shall:
    - i) Use and disclose only PII for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, provided that such use and disclosures are permitted by law; and
    - ii) Take all reasonable steps to destroy, or arrange for the destruction of a client's records within its custody or control containing personal information that is no longer to be retained by Contractor by (1) shredding, (2) erasing, or (3) otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.
2. Responsibilities of Contractor.
  - a. Contractor agrees to safeguards:
    - i) To prevent use or disclosure of PII other than as provided for by this Agreement. Contractor shall provide County with information concerning such safeguards as County may reasonably request from time to time; and
    - ii) Employee Training and Discipline: Contractor shall train its employees and use reasonable measures to ensure compliance with the requirements of this Agreement by employees who assist in the performance of functions or activities under this Agreement and use or disclose individually identifiable health information.
    - iii) Contractor shall restrict logical and physical access to confidential, personal (e.g., PII) or sensitive data to authorized users only; and

- iv) Contractor shall implement a system to identify appropriate authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), Contractor shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-86 and SANS Institute Password Protection Policy.
- b. Contractor shall implement the following security controls on each server, workstation, or portable (e.g. laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
  - i) Network based firewall or personal firewall; and
  - ii) Continuously updated anti-virus software; and
  - iii) Patch-management process including installation of all operating system/software vendor security patches.
- c. Mitigation of Harmful Effects. Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PII by Contractor or its subcontractors.
- d. Agents and Subcontractors of Contractor. The same restrictions and conditions that apply through this Agreement to Contractor, shall also apply to Contractor's subcontractors and agents.
- e. Notification of Electronic Breach or Improper Disclosure. During the term of this Agreement, Contractor shall notify County immediately upon discovery of any breach of PII or data, where the information or data are reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to County Privacy Officer, within two (2) business days of discovery, at (530) 621-5565. Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor shall investigate such breach and provide a written report of the investigation to County Privacy Officer, postmarked within thirty (30) working days of the discovery of the breach.

F. Certifications / Assurances: In the event any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have full force and effect and shall not be affected hereby.

G. Confidentiality Requirements: Acknowledging the Contractor's continuing obligation to follow existing legal mandates regarding protection and/or release of information maintained by the County, the following Confidentiality Requirements apply:

- 1. General Requirements: The Contractor shall not disclose data or documents or disseminate the contents of the final or any preliminary report without express permission of the Contract Administrator.

Permission to disclose information or documents on one occasion or at public hearings held by the County or state Departments of Mental Health relating to the same shall not authorize the Contractor to further disclose such information or documents on any other occasions.

The Contractor shall not comment publicly to the press or any other media regarding the data or documents generated, collected, or produced in connection with this Agreement, or the County or state Departments of Mental Health staff, the Contractor’s own personnel involved in the performance of this Agreement, at a public hearing, or in response to the questions from a legislative committee.

If requested by the County or state, the Contractor shall require each of its employees or officers who will be involved in the performance of this Agreement to agree to the above terms in a form to be approved by the state and shall supply the state with evidence thereof.

Each subcontract shall contain the foregoing provisions related to the confidentiality of data and nondisclosure of the same.

After any data or documents submitted has become a part of the public records of the County or state, the Contractor may, if it wishes to do so at its own expense and upon approval by the County Contract Administrator, publish or utilize the said data or documents but all such published items shall include the following legend:

*LEGAL NOTICE: This report was prepared as an account of work sponsored by the County of El Dorado and State Department of Health Care Services, but does not necessarily represent the views of the County or Department or any of its employees except to the extent, if any, that it has formally been approved by the Department. For information regarding any such action, communicate directly with the County and State of California at:*

COUNTY	STATE DEPARTMENT OF HEALTH CARE SERVICES
Health and Human Services Agency 3057 Briw Road, Suite B Placerville, CA 95667	P.O. Box 997413 Sacramento, CA 94252-2050

*Neither said County nor State Department of Health Care Services / State of California, nor any officer or employee thereof, or the Contractor or any of its subcontractors makes any warranty, express or implied, or assumes any legal liability whatsoever for the contents of this document, nor does any party represent that use of the data contained herein would not infringe upon privately owned rights without obtaining permission or authorization from any party who has any rights in connection with the data.*

“Data” as used in this Agreement means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or be used to define a design or process, or support a premise or conclusion asserted in any deliverable document called for by this Agreement. The data may be graphic or pictorial delineations in media,

such as drawings or photographs, charts, tables, mathematical modes, collections or extrapolations of data or information, etc. It may be in machine form, as punched cards, magnetic tape, computer printouts, or may be retained in computer memory.

“Proprietary data” is such data as the Contractor has identified in a satisfactory manner as being under Contractor’s control prior to commencement of performance of this Agreement and which has been reasonably demonstrated as being of a proprietary force and effect at the time this Agreement is commenced.

“Generated data” is that data, which a Contractor has collected, collated, recorded, deduced, read out, or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model, or software system developed or substantially modified by the Contractor in the performance of this Agreement at Contractor’s expense, together with complete documentation thereof, shall be treated in the same manner as generated data. “Generated data” shall be the property of the state unless and only to the extent that it is specifically provided otherwise herein.

“Deliverable data” is that data which under terms of this Agreement is required to be delivered to the County or state. Such data shall be the property of the County and state.

The title to the Contractor’s proprietary data shall remain in the Contractor’s possession throughout the term of this Agreement and thereafter. As to generated data which is reserved to the County by express terms of this Agreement and as to any preexisting or proprietary data which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, the Contractor shall preserve the same in a form which may be introduced in evidence in a court of competent jurisdiction at the Contractor’s own expense for a period of not less than five (5) years after receipt by the County and state of the final report or termination of this Agreement and any and all amendments hereto, or for three (3) years after the conclusion or resolution of any and all audits or litigation relevant to this Agreement, whichever is later.

Prior to the expiration of such time and before changing the form of or destroying any such data, the Contractor shall notify the County and state of any such contemplated action; and the County or state may within thirty (30) days after said notification determine whether it desires said data to be further preserved and, if the state so elects, the expense of further preserving said data shall be paid for by the state. The Contractor agrees that the County and state shall have unrestricted reasonable access to the same during said three (3) year period and throughout the time during which said data is preserved in accordance with this Agreement, and the Contractor agrees to use best efforts to furnish competent witnesses or to identify such competent witnesses to testify in any court of law regarding said data.

Each party shall designate an employee who shall be responsible for overall security and confidentiality of its data and information systems and each party shall notify the other of any changes in that designation. As of this date, the County’s Information Security/Privacy Officer is as follows:

COUNTY	CONTRACTOR
Information Security/Privacy Officer County of El Dorado 330 Fair Lane Placerville, CA 95667	Lynette McPherson, Paralegal California Hearing Officers, LLP 8801 Folsom Boulevard, Suite 220 Sacramento, CA 95826

2. Confidentiality Requirements relating to the Health Insurance Portability and Accountability Act: The Contractor shall comply with applicable laws and regulations, including but not limited to Sections 14100.2 and 5328 et seq. of the Welfare and Institutions Code, Section 431.300 et seq. of Title 42, Code of Federal Regulations, and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320 d et seq. of Title 42, United States Code and its implementing regulations (including but not limited to Title 45, CFR, Parts 160, 162 and 164) regarding the confidentiality and security of individually identifiable health information (IIHI) in accordance with County's Business Associate Agreement, attached hereto as **Exhibit D**, incorporated herein and made by reference a part hereof.

H. Termination for Cause: Upon the County or state's knowledge of a material breach of this Agreement by the Contractor, the County or state shall:

1. Provide an opportunity for the Contractor to cure the breach or end the violation and terminate this Agreement if the Contractor does not cure the breach or end the violation within the time specified by the County or state; or
2. Immediately terminate this Agreement if the Contractor has breached a material term of this Agreement and cure is not possible; or
3. If neither cure nor termination is feasible, the state Information Security Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
4. Judicial or Administrative Proceedings: The County or state may terminate this Agreement, effective immediately, if (i) the Contractor is found liable in a civil matter or guilty in a criminal matter proceeding for a violation of the HIPAA Privacy or Security Rule or (ii) a finding or stipulation that the Contractor has violated a privacy or security standard or requirement of HIPAA, or other security or privacy laws is made in an administrative or civil proceeding in which the Contractor is a party.
5. Effect of Termination: Upon termination or expiration of this Agreement for any reason, the Contractor shall return or destroy all IIHI received from the state that the Contractor still maintains in any form, and shall retain no copies of such IIHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Agreement to such information, and limit further use of such IIHI to those purposes that make the return or destruction of such IIHI infeasible. This provision shall apply to IIHI that is in the possession of subcontractors or agents of the Contractor.

I. Miscellaneous Provisions:

1. Disclaimer: The County makes no warranty or representation that compliance by the Contractor with this Agreement, HIPAA or the HIPAA regulations shall be adequate or satisfactory for the Contractor's own purposes or that any information in the Contractor's possession or control, or transmitted or received by the Contractor is, or will be, secure

from unauthorized use or disclosure. The Contractor is solely responsible for all decisions made by the Contractor regarding the safeguarding of IIIH.

2. Assistance in Litigation or Administrative Proceedings: The Contractor shall make itself, and use its best efforts to make any subcontractors, employees or agents assisting the Contractor in the performance of its obligation under this Agreement, available to the County or state to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the state, its directors, officers or employees for claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy based upon actions or inactions of the Contractor and/or its subcontractor, employee, or agent, except where the Contractor or its subcontractor, employee or agent is named adverse party.
  3. No Third-Party Beneficiaries: Nothing expressed or implied in the terms and conditions of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the County or the state, or the Contractor and their respective successors or assignees, any rights remedies, obligations or liabilities whatsoever.
  4. Interpretation: The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state or local laws. The parties agree that any ambiguity in the terms and conditions of this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable laws.
  5. Regulatory References: A reference in the terms and conditions of this Agreement to a section in the HIPAA regulations means the section as in effect or as amended.
  6. Survival: The respective rights and obligations of the Contractor under herein this Agreement shall survive the termination or expiration of this Agreement.
  7. No covenant, condition, duty, obligation, or undertaking continued or made a part of this Agreement shall be waived except by written agreement of the parties hereto, and forbearance or indulgence in any other form or manner by either party in regard whatsoever will not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed or discharged by the party to which the same may apply. Until performance or satisfaction of all covenants, conditions, duties, obligations, and undertakings is complete, the other party shall have the right to invoke any remedy available under this contract, or under law, notwithstanding such forbearance or indulgence.
  8. No Waiver of Obligations: No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
  9. Signatures: This Agreement is of no force and effect until signed by both of the parties hereto. The Contractor shall not commence performance prior to the beginning of this Agreement or upon final approval.
- J. Review, Inspection and Record Retention: Contractor agrees to make all of its books and records pertaining to the goods and services furnished under the terms of the contract available for inspection, examination, or copying by authorized County, state or federal agencies, or their duly authorized representatives, at all reasonable times at Contractor's place of business or at such other mutually agreeable location in California, in a form maintained in accordance with the general standards applicable to such book or record keeping. Upon expiration or

termination of this Agreement all client records shall be kept for a minimum of seven (7) years from the date of discharge and in the case of minors, for at least one (1) year after the minor client's eighteenth (18<sup>th</sup>) birthday, but in no case less than seven (7) years from the date of discharge. Service and financial records shall be retained by Contractor, for a term of at least five (5) years from the close of the County's fiscal year in which the contract was in effect, or any longer period as may be required by federal or state law including, but not limited to any record retention laws pertaining to minors, psychiatric health facilities, psychology clinics, psychologists and/or other licensed professionals. If at the end of the applicable retention period, there is litigation or an audit or other investigation involving those books or records, Contractor shall retain the books or records until the resolution of such litigation, audit, or investigation.

The County or their designee shall have access to and right to examine, monitor, and audit all records, documents, conditions, and activities related to programs funded by this Agreement. For purposes of this section "access to" means that the Contractor shall at all times maintain a complete set of records and documents related to programs funded by this Agreement and shall make these records available to the state or County, or their respective designee in a central location.

- K. Release of Information: Contractor shall ensure that County Health and Human Services Agency is included as a receiving party on all Release of Information forms used in the performance of services under this Agreement.
- L. Standards of Conduct: The following standards apply to Contractor and, in the event County agrees in writing to Contractor subcontracting services under this Agreement, pursuant to the Article titled "Assignment and Delegation," Contractor shall ensure the following standards are included in any subcontract hereto:
1. Every reasonable course of action shall be taken to maintain the integrity of this expenditure of public funds and to avoid favoritism and questionable or improper conduct. This Agreement shall be administered in an impartial manner, free from efforts to gain person, financial or political gain.
  2. Any executive or employee of the Contractor shall not solicit or accept money or any other consideration from a third person for the performance of an act reimbursed in whole or part by the County or the state. Supplies, materials, equipment, or services purchased with Agreement funds shall be used solely for purposes allowed under this Agreement. No member of the Contractor's Board will cast a vote on the provision of services by that member (or any organization which that member represents) or vote on any matter which would provide direct financial benefit to that member (or immediate family of the member) or any business or organization which the member directly represents.
  3. The County, by written notice to the Contractor, may terminate the right of the Contractor to proceed under this Agreement if it is found, after notice and hearing by the County or state, that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County or state with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or performing of such Agreement, provided that the existence of the fact upon which the

County or state makes such findings that shall be an issue may be reviewed in any competent court.

4. In the event this Agreement is terminated as provided in the paragraph above, the County or state shall be entitled:
  - a. To pursue the same remedies against the Contractor as it could pursue in the event of the breach of the Agreement by the Contractor, and
  - b. As a predetermined amount of liquidated damages in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount which shall be not less than three (3) times the cost incurred by the County or state in providing any such gratuities to any such officer or employee.
5. The rights and remedies of the Contractor provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. The Contractor warrants by execution of this Agreement that no person or selling agency has been employed or retained to solicit or secure this Agreement upon a contract or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of the Contractor, for the purpose of securing business. For breach or violation of this warranty, the state shall have the right to annul this Agreement without liability, paying only for the values of the work actually returned or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
6. Contractor, and any subcontractors and/or consultants retained by the Contractor with funds provided under this Agreement must comply with the provisions of California Government Code Section 19990, et seq.

M. Subcontracting: In addition to the Article titled, "Assignment and Delegation," the Contractor certifies that:

1. Any work or services specified in this Agreement which will be performed by other than the Contractor shall be evidenced by a written Agreement specifying the terms and conditions of such performance.
2. The Contractor shall maintain and adhere to an appropriate system, consistent with federal, state and local law, for the award and monitoring of contracts that contain acceptable standards for insuring accountability.
3. The system for awarding contracts will contain safeguards to ensure that the Contractor does not contract with any entity whose officers have been convicted of fraud or misappropriation of funds.
4. Subcontractors shall comply with the Confidentiality requirements set forth in the Article titled "Additional Terms and Conditions," Section titled "Confidentiality Requirements," of this Agreement.

N. Debarment and Suspension Certification: By signing this agreement, the Contractor agrees to comply with applicable federal suspension and debarment regulations and Contractor further certifies to the best of its knowledge and belief that it and its principals or affiliates or any subcontractor utilized under the agreement:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;



2. Have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in the above Paragraph B;
4. Have not within a three (3)-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default;
5. Shall not knowingly enter in to any lower tier or subrecipient covered transaction with any person(s) who are proposed for debarment under federal regulations or are debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the state; and
6. Shall include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier or subrecipient covered transactions.

The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.

If the Contractor knowingly violates this certification, in addition to other remedies available to the federal and state Governments, County may immediately terminate this Agreement for cause or default.

- O. Compliance with All Federal, State and Local Laws and Regulations: Contractor shall comply with all federal, state and local laws including, but not limited to, the Americans with Disabilities Act (ADA) of 1990 (42USC12101 et. seq.) and California Government Code Sections 11135-11139.5, and all regulations, requirements, and directives pertinent to its operations. Contractor shall abide by manuals, directives and other guidance issued by the State of California. All appropriate manuals and updates shall be available for review or reference by Contractor from County's Health and Human Services Agency.

Contractor shall further comply with all applicable laws relating to wages and hours of employment and occupational safety and to fire, safety, and health and sanitation regulations. Such laws shall include, but not be limited to, the Copeland "Anti-Kickback" Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Clean Air Act and amendments, the Clean Water Act and amendments, and the Federal Water Pollution Control Act.

Contractor further warrants that it has all necessary licenses, permits, notices, approvals, certificates, waivers and exemptions necessary for the provision of services hereunder and required by the laws and regulations of the United States, the State of California, the County of El Dorado and all other appropriate governmental agencies and shall maintain these throughout the term of the Agreement.

**ARTICLE XXXII**

**California Forum and Law:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

**ARTICLE XXXIII**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

**ARTICLE XXXIV**

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

**ARTICLE XXXV**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**Requesting Contract Administrator Concurrence:**

By: \_\_\_\_\_  
Nicole Ebrahimi-Nuyken, LMFT  
Director of Behavioral Health  
Health and Human Services Agency

Dated: \_\_\_\_\_

**Requesting Department Head Concurrence:**

By: \_\_\_\_\_  
Daniel Del Monte  
Interim Director  
Health and Human Services Agency

Dated: \_\_\_\_\_

//

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

**-- COUNTY OF EL DORADO --**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Chair  
Board of Supervisors  
"County"

ATTEST:  
Kim Dawson  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

**-- CONTRACTOR --**

CALIFORNIA HEARING OFFICERS, LLP

By: \_\_\_\_\_  
Kamardeep Athwal  
General Partner  
"Contractor"

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Andrew Walker  
General Partner  
"Contractor"

Dated: \_\_\_\_\_

## **Exhibit A**

### **Contractor's Approved Certification Review Hearing Officers**

The following Certification Review Hearing Officers (CRHO) provided by California Hearing Officers, LLP, (Contractor) are unanimously approved for Certification Review Hearing services in El Dorado County by County's Mental Health Director, County Counsel, and Public Defender:

1. Andrew Walker
2. Danielle Lopez
3. Frances C. Fort
4. James Reb
5. Kamardeep Athwal
6. Katherine Porter
7. Kimberly Buchholz
8. Maralee Eriksen
9. Renee Davidson
10. Sharon Costa
11. Wraymond Plummer

Contractor verifies that the identified CRHOs meet the requirements to serve as a CRHO as identified in Agreement for Services #6782.

**EXHIBIT B**  
**COUNTY OF EL DORADO**  
**CERTIFICATION REVIEW HEARING**  
**RECORD AND DECISION**

\_\_\_\_\_ 14-Day Certification (Welf\*. & Inst. Code § 5250)    \_\_\_\_\_ Additional 30-Day Certification (Welf. & Inst. Code § 5270.15)

Person certified \_\_\_\_\_ Birth Date \_\_\_\_\_

Facility \_\_\_\_\_ Initial detention date \_\_\_\_\_

14-day certification date \_\_\_\_\_ Additional 30-day certification date \_\_\_\_\_

Certification basis: \_\_\_\_\_ danger to others    \_\_\_\_\_ danger to self    \_\_\_\_\_ gravely disabled

Hearing date \_\_\_\_\_ Hearing Officer \_\_\_\_\_

\_\_\_\_\_ Hearing was not held because: \_\_\_\_\_ person certified was discharged;  
\_\_\_\_\_ person certified was voluntarily admitted;  
\_\_\_\_\_ hearing was postponed at request of person certified or his/her advocate;  
other (state reason below).

Advocate \_\_\_\_\_ Facility representative \_\_\_\_\_

Others present at hearing \_\_\_\_\_

The person certified: \_\_\_\_\_ was present at the hearing;  
\_\_\_\_\_ waived his/her presence (Welf. & Inst. Code § 5256.3).

After considering all the evidence presented, the hearing officer determines:

\_\_\_\_\_ There is probable cause to believe that the person certified is presently, as a result of a mental disorder or impairment by chronic alcoholism:

\_\_\_\_\_ a danger to others;    \_\_\_\_\_ a danger to self;    \_\_\_\_\_ gravely disabled.

The person \_\_\_\_\_ does    \_\_\_\_\_ does not request judicial review by writ of habeas corpus.

There is not probable cause to believe that the person certified is presently, as a result of a mental disorder or impairment by chronic alcoholism, a danger to others, a danger to self, or gravely disabled. The person may no longer be involuntarily detained. The facility shall release the person forthwith unless the person consents to remain at the facility on a voluntary basis.

\_\_\_\_\_ Diagnosis: \_\_\_\_\_

The evidence relied upon and the reasons for this determination are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Certification Review Hearing Officer

#6782

Distribution: court (white); facility (yellow); patient/advocate (pink).

Exhibit B

**EXHIBIT C**  
**“VENDOR ASSURANCE OF COMPLIANCE WITH**  
**THE COUNTY OF EL DORADO HEALTH AND HUMAN SERVICES AGENCY**  
**NONDISCRIMINATION IN STATE**  
**AND FEDERALLY ASSISTED PROGRAMS”**

---

NAME OF VENDOR/RECIPIENT: **California Hearing Officers, LLP**

HEREBY AGREES THAT it will comply with Title VI and VII of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended and in particular section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code section 11135-11139.5, as amended; California Government Code section 12940 (c), (h) (1), (i), and (j); California Government Code section 4450; Title 22, California Code of Regulations section 98000 – 98413; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed or political belief be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state financial assistance; and HEREBY GIVE ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE VENDOR/RECIPIENT HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, the vendor/recipient agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code section 10605, or Government Code section 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on the vendor/recipient directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

8801 Folsom Blvd., Suite 220, Sacramento, CA 95826

Address of vendor/recipient

(08/13/01)

**CR50**-Vendor Assurance of Compliance

*California Hearing Officers*  
(CRJ)

1 of 1

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Exhibit C

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## Exhibit D

### HIPAA Business Associate Agreement

This Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

#### RECITALS

**WHEREAS**, County and Contractor (hereinafter referred to as Business Associate (“BA”) entered into the Underlying Agreement pursuant to which BA provides services to County, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

**WHEREAS**, the County and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH” Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws as may be amended from time to time; and

**WHEREAS**, County is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103 ; and

**WHEREAS**, BA, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

**WHEREAS**, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g);

**WHEREAS**, “Breach” shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

**WHEREAS**, “Unsecured PHI” shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

- I. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
- II. Scope of Use and Disclosure by BA of County Disclosed PHI
  - A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the County, Privacy Rule, Security Rule, or the HITECH Act.
  - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
    - 1. Use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
    - 2. disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
    - 3. Disclose PHI as necessary for BA's operations only if:
      - a) Prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
        - (1) To hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
        - (2) The third party will immediately notify BA of any breaches of confidentiality of PHI to the extent it has obtained knowledge of such breach.
    - 4. Aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
    - 5. Not disclose PHI disclosed to BA by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
    - 6. De-identify any and all PHI of County received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
  - C. BA agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.
- III. Obligations of BA. In connection with its use of PHI disclosed by County to BA, BA agrees to:
  - A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and



availability of the PHI in accordance with Title 45 of the Code of Federal Regulations, Part 160 and Part 164, Subparts A and C (the “HIPAA Privacy Rule” and the “HIPAA Security Rule”) in effect or as may be amended, including but not limited to 45 CFR 164.308, 164.310, 164.312, and 164.504(e)(2) . BA shall comply with the policies, procedures, and documentation requirements of the HIPAA Security Rule.

B. Report to County within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

C. Report to County in writing of any access, use, or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA’s failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.

D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.

IV. PHI Access, Amendment, and Disclosure Accounting. BA agrees to:

A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).

B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA’s possession constitutes a Designated Record Set.

C. To assist the County in meeting its disclosure accounting under HIPAA:

1. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief

statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.

2. Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.

- D. Make available to the County, or to the Secretary of Health and Human Services (the "Secretary") , BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

V. Obligations of County.

- A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.
- D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

VI. Term and Termination.

- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:
  1. Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.
  2. Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or

3. If neither termination nor cures are feasible, the County shall report the violation to the Secretary.
- C. Effect of Termination.
1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
  2. In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.

VII. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "County") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the County in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of County as set forth herein. BA's obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.

- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.
  - E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.
- VIII. Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
- IX. Survival. The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
- X. Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- XI. Conflicts. Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.

**Approval and Signatures**

By: \_\_\_\_\_  
 Kamardeep Athwal  
 General Partner  
 "BA Representative"

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
 Nicole Ebrahimi-Nuyken, LMFT  
 Director of Behavioral Health  
 "HHS Representative"

Dated: \_\_\_\_\_